

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

UNITED STATES OF AMERICA,
Plaintiff

v.

SCOTT JAMES EIZEMBER,
Defendant

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Case No. **2:04-CR-20006-PKH**

UNOPPOSED MOTION TO AMEND JUDGMENT IN ABSENTIA

COMES NOW the defendant, **Scott James Eizember**, by the Office of the Federal Public Defender and its attorney, **Jack Schisler**, and does hereby respectfully move the Court as follows:

1. Pursuant to a judgment of the Eighth Circuit Court of Appeals entered on September 9, 2019 (*Eizember v. United States*, 17-1406), vacating Mr. Eizember's conviction on Count Three of the indictment, the United States moved to dismiss Count Three. ECF 77.

2. In response to that motion, this Court ordered dismissal of Count Three (ECF 78), and in that order noted that a resentencing will be necessary.

3. As Mr. Eizember is serving a state court sentence in Oklahoma, and in light of the fact that the dismissal of Count Three is beneficial to Mr. Eizember, rather than to his detriment, counsel requests that the matter be disposed of by way of an amended judgment reflecting the parties' agreement that the remand calls for the Court to reduce Mr. Eizember's sentence to 216 months from 300 months, and that neither a formal resentencing, nor Mr. Eizember's presence, is required.

Since the district court did not need to resentence Rust, his presence was not required. Under Fed.R.Crim.P. 43, a defendant must be present only where the sentence is made more onerous, or the entire sentence is set

aside and the cause remanded for resentencing. *United States v. McClintic*, 606 F.2d 827, 828 (8th Cir.1979).

Rust v. United States, 725 F.2d 1153, 1154 (8th Cir. 1984).

4. Should the Court determine an updated presentence report is needed to further memorialize the changes brought about by the Eighth Circuit's decision, counsel is prepared to review that document, and any other pertinent documents, with Mr. Eizember in person at the facility where he is housed in Oklahoma.

WHEREFORE, the defendant respectfully requests the Court amend the judgment to reflect the new sentence, and to do so without requiring Mr. Eizember to be present.

Respectfully submitted,

BRUCE D. EDDY
FEDERAL PUBLIC DEFENDER WESTERN
DISTRICT OF ARKANSAS

By: /s/ Jack Schisler

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing registered CM/ECF participants.

/s/ Jack Schisler

Jack Schisler
Attorney for the Defendant